

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER SHANE RIVERA,  
Plaintiff,  
v.  
S. KERNAN, et al.,  
Defendants.

Case No. [17-cv-00335-JSW](#)

**ORDER DENYING MOTION TO  
DISMISS**

Re: Dkt. Nos. 35, 45

**INTRODUCTION**

Plaintiff, a California prisoner located at Pelican Bay State Prison (“PBSP”), filed this pro se civil rights case under 42 U.S.C. 1983. In the complaint,<sup>1</sup> Plaintiff claims that Defendants, California prison officials, violated his rights under the Free Exercise Clause of the First Amendment and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), and under the Equal Protection Clause of the Fourteenth Amendment, by preventing him from practicing rituals of his “Odinist” faith. Defendants filed a motion to dismiss under Rule 12(b)(6) for failure to state a claim upon which relief may be granted. Plaintiff filed an opposition. Defendants filed a motion for a 60-day extension of time in which to file a reply brief. For the reasons discussed below, the motion to dismiss is GRANTED IN PART AND DENIED IN PART, and the motion for an extension of time is DENIED.

**DISCUSSION**

**I. Standard of Review**

Failure to state a claim is grounds for dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Dismissal for failure to state a claim is a ruling on a question of law. *Parks*

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<sup>1</sup> The operative complaint is the First Amended Complaint, which is referred to herein simply as the “complaint.”

*School of Business, Inc., v. Symington*, 51 F.3d 1480, 1483 (9th Cir. 1995). "The issue is not whether plaintiff will ultimately prevail, but whether he is entitled to offer evidence to support his claim." *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations and internal quotations omitted). Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1986-87. A motion to dismiss should be granted if the complaint does not proffer "enough facts to state a claim for relief that is plausible on its face." *Id.* at 570; *see, e.g., Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1952 (2009).

Review is limited to the contents of the complaint, *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994), including documents physically attached to the complaint or documents the complaint necessarily relies on and whose authenticity is not contested. *Lee v. County of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). In addition, the court may take judicial notice of facts that are not subject to reasonable dispute. *Id.* at 688 (discussing Fed. R. Evid. 201(b)). Allegations of fact in the complaint must be taken as true and construed in the light most favorable to the non-moving party. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). The court need not, however, "accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Ibid.*

A *pro se* pleading must be liberally construed, and "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Twombly*, 550 U.S. at 570 (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). Allegations of fact in the complaint

must be taken as true and construed in the light most favorable to the non-moving party.  
*Symington*, 51 F.3d at 1484.

## II. Legal Claims

Plaintiff claims that he is a member of the “Odinist” religion known as “Asatru.” The religion observes the holidays of Winter Solstice, Summer Solstice, the Spring Equinox, and the Autumnal Equinox. Plaintiff and fellow adherents of his religion at PBSP requested a food celebration for the Winter Solstice Yule Festival in December 2015, the Summer Solstice on June 21, 2016, the Autumnal Equinox on September 21, 2016, and the Winter Solstice Yule Festival in December 2016. The requests for the first two of these celebrations received no response. The request for the 2016 Autumnal Equinox celebration was eventually approved, but not until November 16, 2016. The celebration of the 2016 Winter Solstice was also approved, but not until May 10, 2017. Funds were donated to PBSP for food for the celebrations, but prison officials allowed funds contributed for the 2016 Summer Solstice celebration to “expire.” In December 2016, donations of such funds for Odinist feasts were banned.

### 1. Eleventh Amendment

Defendants argue correctly that the Eleventh Amendment bars Plaintiff’s claims for damages under the First Amendment and Equal Protection Clause claims against Defendants in their official capacity. *See Confederated Tribes & Bands v. Locke*, 176 F.3d 467, 469 (9th Cir. 1999) (damages claim against governor in his official capacity barred by 11th Amendment). Such claims for injunctive relief against Defendants in their official capacities and for damages in their individual capacities are not barred by the Eleventh Amendment. Plaintiff’s RLUIPA claims for damages may not proceed against Defendants in either their official or individual capacities. *See Jones v. Williams*, 791 F.3d 1023, 1031 (9th Cir. 2015) (RLUIPA does not authorize money damages against state officials, whether sued in their official or individual capacities). The RLUIPA claims for injunctive relief remain.

### 2. Causation

Defendants argue that Plaintiff’s claims are not cognizable because he has not sufficiently alleged causation. The Court has already found the claims cognizable, and Defendants’ motion

1 does not undermine this conclusion.

2 Liability may be imposed on an individual defendant under 42 U.S.C. § 1983 if the  
3 plaintiff can show that the defendant's actions actually and proximately caused the deprivation of  
4 a federally protected right. *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988). A person deprives  
5 another of a constitutional right within the meaning of section 1983 if he does an affirmative act,  
6 participates in another's affirmative act or omits to perform an act which he is legally required to  
7 do, that causes the deprivation of which the plaintiff complains. *Id.* at 633.

8 Plaintiff alleges that Defendants Kernan and Ducart, the CDCR Director and the PBSP  
9 Warden, respectively, caused his violations because they failed to properly train officials  
10 responsible for reviewing administrative grievances and officials at PBSP to ensure that they  
11 would not violate inmates' rights. Supervisors are not liable under Section 1983 for all the  
12 violations of committed by their associates, but they are liable when they knowingly acquiesce in  
13 those violations; and failure to adequately train subordinates is a recognized method of such  
14 acquiescence. *Keates v. Koile*, 883 F.3d 1228, 1243 (9th Cir. 2018); *Starr v. Baca*, 652 F.3d 1202,  
15 1208 (9th Cir. 2011). Plaintiff sufficiently alleges that Kernan and Ducart caused the known  
16 violations of his rights by not adequately training their subordinates to prevent them.

17 Plaintiff alleges that Defendants Voong, Lee, and Puget failed to adequately respond to  
18 administrative appeals requesting an investigation into whether PBSP staff were violating the  
19 religious rights of Odinist inmates. Defendants cite law stating that the improper review of  
20 administrative appeals does not violate any constitutional rights. *See Ramirez v. Galaza*, 334 F.3d  
21 850, 860 (9th Cir. 2003). While this is true, Plaintiff's claims are more expansive. He claims that  
22 their failure to grant administrative appeals more quickly caused him to celebrate the 2016  
23 Autumn Equinox and 2016 Winter Solstice holidays months beyond the dates those holidays were  
24 supposed to be celebrated according to the Asatru religion. This a sufficient allegation that  
25 Defendants Voong, Lee, and Puget caused a violation of his rights.

26 Plaintiff alleges that Defendant Olson disapproved of donations made to purchase food for  
27 the Winter Solstice in 2016, but not for the holidays of other religions. A permissible inference  
28 from this allegation is that disapproving food purchase donations caused or contributed to the

1 delay in celebrating the 2016 Winter Solstice but did not delay the holidays of other religions

2 Plaintiff alleges that the requests for the holiday celebrations were sent to Losacco and  
3 McCovey, who either did not respond to them or their response did not lead to a timely celebration  
4 of the holidays. Defendants argue this is not sufficient to allege causation because the California  
5 regulations did not require accommodation of all the requested celebrations. Plaintiff is not  
6 claiming a violation of the state regulations, but rather of federal law. Plaintiff sufficiently alleges  
7 that the actions or inactions of Defendants Losacco and McCovey caused those claimed violations.

8 3. Qualified Immunity

9 Defendants argue that they are entitled to qualified immunity because the delays in  
10 celebrating two of holidays was not a substantial burden on Plaintiff's religious practice. A court  
11 considering a claim of qualified immunity must determine whether the plaintiff has alleged the  
12 deprivation of an actual constitutional right and whether such right was clearly established such  
13 that it would be clear to a reasonable officer that his conduct was unlawful in the situation he  
14 confronted. *See Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

15 To begin with, Defendants do not address the two holidays --- the 2015 Winter Solstice  
16 and the 2016 Summer Solstice --- that Plaintiff was allegedly never able to celebrate. Defendants  
17 argue that a "temporary" delay in celebrating the two other religious holidays is not a substantial  
18 burden. However, Plaintiff alleges that celebrating these holidays on specific dates is an essential  
19 tenet of his religion. No reasonable person would believe that requiring Christians to celebrate  
20 Christmas on December 28 (let alone in May), or Jews to celebrate Yom Kippur thirteen days after  
21 Rosh Hashanah (let alone in November) would not substantially burden their religious practice.  
22 Observation of these major holidays on particular dates is an essential tenet of these religions.  
23 Similarly, Defendants could not reasonably believe that they did not substantially burden  
24 Plaintiff's practice of his Asatru religion by causing Plaintiff to celebrate the Asatru holidays on  
25 days with no religious significance, months after the date on which those holidays were observed  
26 according to Asatru's essential tenets.

27 Lastly, Defendants argue that the large growth in the number of religious groups at PBSP -  
28 -- not an intent to discriminate against Odinists --- was the reason for their inaction. The reference

1 to the growth of religious groups appears in response to Plaintiff's administrative grievances  
2 attached to the complaint. Defendants may be able to supply evidence of such a growth at a later  
3 stage of this litigation, but it does not support of Defendants' motion because, besides being  
4 hearsay, the growth of religious groups is not alleged by plaintiff or judicially noticeable.

5 Defendants are not entitled to dismissal of any of Plaintiff's claims on the grounds of  
6 qualified immunity because no reasonable official would believe that Defendants' alleged conduct  
7 was lawful.

### 8 CONCLUSION

9 The motion to dismiss is GRANTED IN PART AND DENIED IN PART. The claims for  
10 money damages under RLUIPA and First and Fourteenth Amendment claims against Defendants  
11 in their official capacity for money damages are DISMISSED. The claims for money damages  
12 under the First and Fourteenth Amendments against Defendants in their individual capacity, and  
13 the claims for injunctive relief under these Amendments and under RLUIPA remain. Defendants'  
14 motion for an extension of time to file a reply brief is DENIED because Defendants did not show  
15 sufficient cause for an extension of 60 days.

16 Defendants **shall** file an answer in accordance with the Federal Rules of Civil Procedure.

17 In order to expedite the resolution of this case:

18 1. No later than **91 days** from the date this order is filed, the parties shall file a  
19 motion for summary judgment. If defendants are of the opinion that this case cannot be resolved  
20 by summary judgment, they shall so inform the court prior to the date the summary judgment  
21 motion is due. All papers filed with the court shall be promptly served on the plaintiff.

22 2. Plaintiff's opposition to defendants' summary judgment motion, if any, shall be  
23 filed with the court and served upon defendants no later than **28 days** from the date of service of  
24 the motion. Plaintiff must read the attached page headed "NOTICE -- WARNING," which is  
25 provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc),  
26 and *Klingele v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988). Defendants **shall** file a reply  
27 brief no later than **14 days** after the date of service of the opposition.

28 3. Motions shall be deemed submitted as of the date the reply brief is due. No

1 hearing will be held on the motion unless the court so orders at a later date.

2 4. Along with his motion, defendants shall file proof that they served plaintiff the  
3 *Rand* warning at the same time they served him with their motion. Failure to do so will result in  
4 the summary dismissal of their motion.

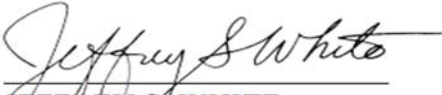
5 5. All communications by the plaintiff with the court must be served on defendant,  
6 or defendant's counsel once counsel has been designated, by mailing a true copy of the document  
7 to defendant or defendant's counsel.

8 6. Discovery may be taken in accordance with the Federal Rules of Civil  
9 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule  
10 16-1 is required before the parties may conduct discovery.

11 7. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the  
12 court informed of any change of address and must comply with the court's orders in a timely  
13 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
14 to Federal Rule of Civil Procedure 41(b).

15 **IT IS SO ORDERED.**

16 Dated: September 28, 2018

  
JEFFREY S. WHITE  
United States District Judge

**NOTICE -- WARNING (SUMMARY JUDGMENT)**

If Defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact-- that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in Defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.